

Internal Revenue Service

Department of the Treasury

District
Director

1100 Commerce St., Dallas, Texas 75242

Date: JAN 17 1996

Employer ID Number:

Person to Contact:

Telephone Number:

Refer Reply To:

49200AL:RD

Case Number:

755317020

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code.

The information you submitted indicates that you were incorporated on [REDACTED] under the laws of the State of [REDACTED]. Your stated purposes are to perform educational and charitable activities within the meaning of Internal Revenue Code section 501(c)(3).

You plan to develop educational programs to teach students responsibility. These programs will help reduce violence, substance abuse, and drop-out rates, and also encourage conservation, better health and nutrition, and safety. You intend to develop the "[REDACTED]" Poster Program to help reduce violence in schools. The [REDACTED] Poster Program is an art based program using the [REDACTED] Cartoon characters to teach children in grades 4-5th how to create posters using art concepts and visual communications methods to express their feelings about social issues in addition to concerns about violence.

The "[REDACTED]" cartoon character made his first public appearance at the [REDACTED], appearing on bulletin boards, banners, walls, and T-shirts. Because of the initial success and interest by students and faculty members in the "[REDACTED]" cartoon character and the poster program, you intend formalize the program so that it can be replicated by educators in many school districts.

The copyrights to the [REDACTED] Characters are owned by [REDACTED], an officer of the organization. He is lending them to the organization at no cost to the foundation. You originally intended to establish a private operating foundation that would be supported by finances donated from royalties from commercial licensing of the cartoon character. Since it would take a long time to have enough royalties to support the educational and charitable activities planned, it was decided to be supported by contributions from the general public.

Our letter of [REDACTED] stated that the presumption of private benefit could be overcome if the copyrights were turned over to the organization. You responded that [REDACTED] will not receive any monetary or other benefits from the [REDACTED] for the use of the cartoon character, but you did not submit a statement agreeing to turn the copyrights over to the organization.

Section 501(c) of the Code describes certain organizations exempt from Federal income tax under section 501(a) and reads, in part, as follows:

Section 1.501(a)(1)-1(c) provides that the words "private shareholder or individual" refer to persons having a personal and private interest in the activities of the organization.

Section 1.501(c)(3)-1 of the regulations provides, in part, as follows:

"(c)(1) Primary activities. An organization will be regarded as 'operated exclusively' for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose."

"(d)(1)(i) An organization is not organized or operated exclusively for one or more of the purposes specified in subdivision (1) of this subparagraph unless it serves a public rather than a private interest. Thus, to meet the requirement of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests."

In Better Business Bureau of Washington D.C. v United States 326 U.S. 279 (1945) the Court held that a better business bureau was not exclusively educational. Its activities were in part aimed at promoting the prosperity and standing of the business community, even though there was also benefit to the public. The court stated that, in order to fall within the claimed exemption, an organization must be devoted to exempt purposes exclusively. The presence of a single nonexempt purpose, if substantial in nature, will destroy exemption regardless of the number and importance of truly exempt purposes.

Revenue Ruling 66-358, 1966-2 C.B. 218 held that an organization exempt under IRC 501(c)(3) may accept funds and land necessary to establish a public park from a donor corporation and retain exemption even though the donor kept a right to continue using a scenic view in the park as its corporate symbol. The public benefit derived from the park far outweighs the rather insignificant private benefit falling to the corporate donor from its continued use of the scenic view.

Revenue Ruling 70-186, 1970-1 C.B. 128 holds that a nonprofit organization formed to preserve and improve a lake used extensively as a public recreational facility qualifies for exemption under section 501(c)(3) of the Code. The organization was formed to preserve the lake as a public recreational facility and to improve the condition of the water in the lake to enhance its recreational features. It is financed by contributions from lake front

property owners, from members of the community adjacent to the lake, and from municipalities bordering the lake. The revenue ruling concludes, in part, that the benefit to be derived from the organization's activities flow principally to the general public through the maintenance and improvement of public recreational facilities. Any private benefits derived by the lake front property owners do not lessen the public benefits flowing from the organization's operations. In fact, it would be impossible for the organization to accomplish its purposes without providing benefits to the lake front property owners.

On the basis of the information submitted, we have concluded that you are not operated exclusively for one or more purposes as specified in section 501(c)(3) of the Code. Although you intend to have some educational and charitable activity, you are not exclusively educational or charitable, as required by this section of the Code. You are using the organization's funds to promote the copyrighted material of an officer of the organization, which is a private benefit to him.

In discussing private benefit, it is important to keep in mind that the private benefit standard does not derive from that portion of the IRC 501(c)(3) which prohibits inurement of net earnings, but rather on that portion which requires an organization to be "operated exclusively" for exempt purposes. Like the Better Business Bureau case, you are not exclusively educational or charitable.

Unlike the organization in Rev. Rul. 70-186, it is possible to accomplish your educational and charitable purposes without providing benefit to the officer of the organization. It is possible to turn the copyrights over to the organization in order to eliminate the private benefit to the officer and still carry on the educational and charitable activities, but you have chosen not to do so.

In addition, the private benefit that derives to the officer of the organization holding the copyright is not insignificant as was the case in Revenue Ruling 66-358. The private benefit of promoting the copyright at no cost to your officer far exceeds the educational and charitable benefits to the public.

Accordingly, it is held that you are not entitled to exemption from Federal income tax as an organization described in section 501(c)(3) of the Code, and you are required to file income tax returns on Form 1120.

If you do not agree with these conclusions, you may, within 30 days from the date of this letter, file in duplicate a brief of the facts, law, and argument that clearly sets forth your position. If you desire an oral discussion of the issue, please indicate this in your protest. The enclosed Publication 892 gives instructions for filing a protest.

If you do not file a protest with this office within 30 days of the date of this report or letter, this proposed determination will become final.

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Code as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides in part that, "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Court of Claims,

[REDACTED]

or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

If this determination letter becomes a final determination, we will notify the appropriate State Officials, as required by section 5104(c) of the Code, that based on the information we have, we are unable to recognize you as an organization of the type described in Code section 501(c)(3).

If you have any further questions, please contact the person whose name and telephone number are shown at the beginning of this letter.

Sincerely,

[REDACTED]

[REDACTED]

District Director

Enclosures:
Publication 892
Form 6018